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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,056	09/30/2003	Karen M. Green	5633	5839

7590

09/09/2004

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EXAMINER

PATEL, VINOD D

ART UNIT PAPER NUMBER

3742

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,056	<b>Applicant(s)</b> GREEN ET AL. <span style="float: right;">CJG</span>	
	<b>Examiner</b> Vinod D. Patel	<b>Art Unit</b> 3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED OFFICE ACTION

### INTRODUCTION

1. This application/control number 10/675,056 has been examined. This is the first action on the merits of the claimed invention. The application has claims 1-20 pending.

#### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/675,062. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims are written using different words but claimed resulting structure shown in the Figures 1-9 is same for both applications. In addition both applications discloses same specification (20 pages), same abstract (1 page) and same drawings Figures 1-9.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullivan (US6768086).

Sullivan (Fig. 1-6) discloses an electrical connection of flexible conductive strands in a flexible body (20) comprising: a flexible planar body (22) having a conductive resistance pathway (24) including at least one conductive resistance flexible strand of material, and a temperature dependent variable resistance pathway (28) having at least one temperature dependent variable resistance flexible strand of material, wherein the conductive resistance pathway and the temperature dependent variable resistance pathway have different routes in the flexible planar body as shown in the Figure 3. The flexible heater according to Figure 4, the conductive resistance pathway (324) includes a plurality of conductive resistance flexible strands of material. The flexible heater according Figure 4, wherein the conductive resistance pathway (324) further includes a supply bus (302) flexible strand of material electrically connected with the conductive resistance flexible strands of material. The flexible heater according to Figure 4, wherein the conductive resistance pathway further includes a first supply bus (302) flexible strand of material and a second supply bus (304) flexible strand of material, and where in the conductive resistance (324) flexible strands of material are electrically connected in parallel

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between the first supply bus flexible strand of material and the second supply bus flexible strand of material. The flexible heater wherein the temperature dependent variable resistance flexible strand of material has a positive coefficient of temperature to resistance (Abstract). The flexible heater (warming blanket fabric) body further includes a plurality of non-conductive flexible strands of material of the flexible planar body are interlaced. The flexible heater according to the Figures 3-5, the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in at least one crossing location, wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in about a substantially perpendicular direction. The flexible heater (warming blanket fabric) wherein the conductive resistance flexible strand of material comprises a conducting resistance yarn. The flexible heater wherein the conductive resistance pathway includes a plurality of conductive resistance yarns. The flexible heater wherein the conductive resistance pathway further includes a first and a second supply bus yarn, and where in the conductive resistance yarns are electrically connected in parallel between the first supply bus yarn and the second supply bus yarn. The flexible heater wherein the temperature dependent variable resistance flexible strand of material comprises a temperature dependent variable resistance yarn. The flexible heater wherein the temperature dependent variable resistance yarn has a positive coefficient of temperature to resistance. The flexible heater (Figure 3-5) wherein the temperature dependent variable resistance pathway further includes a first connection bus yarn and a second connection bus yarn, and wherein the temperature dependent variable resistance yarns are electrically connected in series by the first connection bus yarn and the second connection bps yarn. The flexible heater (Figure 3-5) wherein the flexible body further comprises a plurality of non-conductive yarns. The

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flexible heater, wherein the plurality of non-conductive yarns of the flexible planar body are woven together. The flexible heater (Figure 3-5) wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in at least one crossing location, wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in about a substantially perpendicular direction.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP



Vinod Patel  
Patent Examiner  
Art Unit 3742



ROBIN O. EVANS  
PRIMARY EXAMINER

9/7/04